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No. L. D. 2070—Legis. 3-51-40, dated Bangalore, 18th February 1952.

Ordered that the Presidential and Vice-Presidential Elections Bill, 1952 (Central Bill No. 1 of 1952), published in the *Gazette of India*, Part II, Section 2, dated the 26th January 1952, be republished in the *Mysore Gazette*, for general information.

By Order of His Highness the Maharaja,

N. R. JAYA RAO,
Legal Remembrancer and
Secretary to Government,
Law Department.

PARLIAMENT OF INDIA.

NOTIFICATION.

New Delhi, the 21st January 1952.

No. F. 111-L/52.—Under Rule 55 of the Rules of Procedure and Conduct of Business in Parliament, the Speaker has been pleased to order the publication in the *Gazette of India* of the following Bill, together with the Statement of Objects and Reasons relating thereto, and the Bill and the Statement of Objects and Reasons accordingly published for general information :—

BILL NO. 1 OF 1952.

A Bill to regulate certain matters relating to or connected with elections to the offices of President and Vice-President of India.

BE it enacted by Parliament as follows :—

PART I.

PRELIMINARY.

1. Short title.—This Act may be called the Presidential and Vice-Presidential Elections Act, 1952.

2. Definitions.—In this Act, unless the context otherwise requires,—

(*a*) "article" means an article of the Constitution ;

(*b*) "election" means a presidential election or vice-presidential election ;

(*c*) "Election Commission" means the Election Commission appointed by the President under article 324 ;

(*d*) "prescribed" means prescribed by rules made under this Act ;

(*e*) "presidential election" means an election to fill the office of the President of India ;

(*f*) "vice-presidential election" means an election to fill the office of the Vice-President of India.

PART II.

CONDUCT OF PRESIDENTIAL AND VICE-PRESIDENTIAL ELECTIONS.

3. Returning Officer and his assistants.—(1) The Central Government shall, in consultation with the Election Commission, appoint an officer of Government to be the Returning Officer for the purposes of each election under this Act and may also appoint one or more Assistant Returning Officers.

(2) Subject to rules made under this Act, every Assistant Returning Officer shall be competent to perform all or any of the functions of the Returning Officer.

4. Appointment of dates for nominations, etc.—(1) The Election Commission shall, by notification in the Official Gazette, appoint for every election—

(*a*) the last date for making nominations which shall be a date not later than the fourteenth day and not earlier than the eighth day after the date of publication of the notification under this sub-section;

(*b*) a date for the scrutiny of nominations which shall be a date not later than the third day after the last date for making nominations;

(*c*) the last date for the withdrawal of candidatures which shall be the third day after the date for the scrutiny of nominations;

(*d*) the date or dates on which a poll shall, if necessary, be taken, which, or the first of which, shall be a date not earlier than the tenth day after the last date for the withdrawal of candidatures.

(2) In the case of the first presidential and vice-presidential elections, the notifications under sub-section (1) shall be issued as soon as may be after both Houses of Parliament have been first constituted.

(3) In the case of an election to fill a vacancy caused by the expiration of the term of office of the President or Vice-President, the notification under sub-section (1) shall be issued on, or as soon as conveniently may be after, the sixtieth day before the expiration of the term of office of the outgoing President or Vice-President, as the case may be, and the dates appointed under the said sub-section shall be so selected that the election will be completed at such time as will enable the President or the Vice-President thereby elected to enter upon his office on the day following the expiration of the term of office of the outgoing President or Vice-President, as the case may be.

(4) In the case of an election to fill a vacancy in the office of President or Vice-President occurring by reason of his death, resignation or removal or otherwise, the notification under sub-section (1) shall be issued as soon as may be after the occurrence of such vacancy.

5. Nomination of candidates.—Any person may be nominated as a candidate for election to the office of President or Vice-President if he is qualified to be elected to that office under the Constitution.

6. Withdrawal of Candidature.—(1) Any candidate may withdraw his candidature by a notice in writing in the prescribed form subscribed by him and delivered before three o'clock in the afternoon on the date fixed under clause (c) of sub-section (1) of section 4, to the Returning Officer either by such candidate in person or by his proposer or seconder who has been authorised in this behalf in writing by such candidate:

Provided that if that day is a public holiday within the meaning of section 25 of the Negotiable Instruments Act, 1881 (XXVI of 1881) or has been notified by the

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Central Government as a day to be observed as a holiday in its offices in New Delhi, the notice of withdrawal of candidature shall be considered as having been delivered in due time if it is delivered before three o'clock in the afternoon on the next succeeding day which is neither such a public holiday nor a day so notified.

(2) No person who has given a notice of withdrawal of his candidature under sub-section (1) shall be allowed to cancel the notice.

(3) The Returning Officer shall, on receiving a notice of withdrawal under sub-section (1), as soon as may be thereafter, cause a notice of the withdrawal to be affixed in some conspicuous place in his office.

7. Appointment of election agent.—(1) Every person nominated as a candidate at an election shall, if it is so prescribed, appoint either himself or some one other person to be his election agent.

(2) Every such appointment shall be made at such time and in such manner as may be prescribed.

8. Death of Candidate before poll.—If a candidate who has been duly nominated under this Act dies after the date fixed for the scrutiny of nominations and a report of his death is received by the Returning Officer before the commencement of the poll, the Returning Officer shall, upon being satisfied of the fact of the death of the candidate, countermand the poll and report the fact to the Election Commission and also to the Central Government, and all proceedings with reference to the election shall be commenced anew in all respects as if for a new election :

Provided that no further nomination shall be necessary in the case of a candidate whose nomination was valid at the time of the countermanding of the poll :

Provided further that no person who has under sub-section (1) of section 6 given a notice of withdrawal of his candidature before the countermanding of the poll shall be ineligible for being nominated as a candidate for the election after such countermanding.

9. Procedure in contested and uncontested elections.—If after the expiry of the period within which candidatures may be withdrawn under sub-section (1) of section 6—

(*a*) there is only one candidate who has been validly nominated and has not withdrawn his candidature in the manner and within the time specified in that sub-section, the Returning Officer shall forthwith declare such candidate to be duly elected to the office of President or Vice-President, as the case may be;

(*b*) the number of candidates who have been duly nominated but have not so withdrawn their candidatures exceeds one, the Returning Officer shall forthwith publish in such form and manner as may be prescribed a list containing the names in alphabetical order and addresses of candidates as given in the nomination papers, together with such other particulars as may be prescribed, and a poll shall be taken;

(*c*) there is no candidate who has been duly nominated and has not so withdrawn his candidature, the Returning Officer shall report the fact to the Election Commission and the Central Government, and thereafter all the proceedings in relation to the election shall be commenced afresh and for that purpose the Election Commission shall cancel the notification issued under sub-section (1) of section 4 in respect of such election and issue another notification under that sub-section appointing the dates referred to in that sub-section for the purposes of such fresh election.

10. Manner of voting at elections.—At every election where a poll is taken, votes shall be given by ballot in such manner as may be prescribed, and no votes shall be received by proxy.

11. Counting of votes.—At every election where a poll is taken, votes shall be counted by, or under the supervision of the Returning Officer and each candidate and one representative of each candidate authorised in writing by the candidate, shall have a right to be present at the time of counting.

12. Declaration of results.—When the counting of the votes has been completed, the Returning Officer shall forthwith declare the result of the lection in the manner provided by this Act or the rules made thereunder.

13. Report of the result.—As soon as may be after the result of an election has been declared, the Returning Officer shall report the result to the Central Government and the Election Commission, and the Central Government shall cause to be published in the Official Gazette the declaration containing the name of the person elected to the office of President or Vice-President, as the case may be.

PART III.

DISPUTES REGARDING ELECTIONS.

14. Definitions.—In this Part and in Part IV, unless the context otherwise requires—

(*a*) "agent" includes an election agent and any person who, on the trial of an election petition under this Part or of an offence with respect to an election, is held to have acted as an agent in connection with the election with the knowledge or consent of the candidate;

(*b*) "candidate" means a person who has been or claims to have been duly nominated as a candidate at an election, and any such person shall be deemed to have been a candidate as from the time when, with the election in prospect, he began to hold himself out as a prospective candidate;

(*c*) "costs" means all costs, charges and expenses of, or incidental to, a trial of an election petition;

(*d*) "electoral right" means the right of a person to stand or not to stand as, or to withdraw from being, a candidate, or to vote or refrain from voting at an election;

(*e*) "returned candidate" means a candidate whose name has been published under section 13 as duly elected.

15. Election petitions.—(1) No election shall be called in question except by an election petition presented to the Supreme Court in accordance with the provisions of this Part and of the rules made by the Supreme Court under Article 145.

(2) An election petition calling in question an election may be presented on one or more of the grounds specified in sub-section (1) of section 19 and section 20 to the Supreme Court by any candidate at such election or by any person entitled to vote at such election.

(3) Every such petition shall be presented within such time but not earlier than the date of publication of the declaration containing the name of the returned candidate at the election under Section 13 as may be prescribed.

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16. Form of petitions, etc. and procedure.—Subject to the provisions of this Part, rules made by the Supreme Court under Article 145 may regulate the form of election petitions, the manner in which they are to be presented, the persons who are to be made parties thereto, the procedure to be adopted in connection therewith and the circumstances in which petitions are to abate, or may be withdrawn, and in which new petitioners may be substituted, and may require security to be given for costs.

17. Relief that may be claimed by the petitioner.—A petitioner may claim either of the following declarations :—

(*a*) that the election of the returned candidate is void ;

(*b*) that the election of the returned candidate is void and that he himself or any other candidate has been duly elected.

18. Orders of the Supreme Court.—(1) At the conclusion of the trial of the election petition, the Supreme Court shall make an order—

(*a*) dismissing the election petition ; or

(*b*) declaring the election of the returned candidate to be void ; or

(*c*) declaring the election of the returned candidate to be void and the petitioner or any other candidate to have been duly elected.

(2) At the time of making an order under sub-section (1), the Supreme Court shall also make an order fixing the total amount of costs payable and specifying the persons by and to whom costs shall be paid.

19. Grounds for declaring the election of a returned candidate to be void.—(1) Subject to the provisions of sub-section (2), if the Supreme Court is of opinion—

(*a*) that the election of a returned candidate has been procured or induced, or the result of the election has been materially affected, by any corrupt practice ; or

(*b*) that any corrupt practice referred to in clause (*a*) of section 22 has been committed by the returned candidate or his agent or by any other person with the connivance of the returned candidate or his agent; or

(*c*) that the result of the election has been materially affected by the improper acceptance or rejection of any nomination, or by the improper reception or refusal of a vote or by the reception of any vote which is void, or by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act or of any other Act or rules relating to the election or by any mistake in the use of any prescribed form,

the Supreme Court shall declare the election of the returned candidate to be void.

(2) If, in the opinion of the Supreme Court, the returned candidate has been guilty by an agent other than his election agent, if any, of any corrupt practice referred to in clause (*a*) of section 22, but the Supreme Court is satisfied—

(*a*) that no such corrupt practice was committed at the election by the candidate or his election agent and every such corrupt practice was committed contrary to the orders and without the sanction or connivance of the candidate or his election agent;

(*b*) that all such corrupt practices were of a trivial and limited character or took the form of customary hospitality which did not affect the result of the election ;

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(*c*) that the candidate and his election agent, if any, took all reasonable means for preventing the commission of corrupt practices at the election; and

(*d*) that in all other respects the election was free from any corrupt practice on the part of the candidate or any of his agents, then the Supreme Court may decide that the election of the returned candidate is not void.

20. Grounds for which a candidate other than the returned candidate may be declared to have been elected.—If any person who has lodged an election petition has, in addition to calling in question the election of the returned candidate, claimed a declaration that he himself or any other candidate has been duly elected and the Supreme Court is of opinion—

(*a*) that in fact the petitioner or such other candidate received a majority of the valid votes; or

(*b*) that but for the votes obtained by the returned candidate by corrupt practices the petitioner or such other candidate would have obtained a majority of the valid votes,

the Supreme Court shall, after declaring the election of the returned candidate to be void, declare the petitioner or such other candidate, as the case may be, to have been duly elected.

21. Transmission of orders to the Central Government and its publication.—The Supreme Court shall, after announcing the orders made under section 18, send a copy thereof to the Central Government, and on receipt of such copy the Central Government shall forthwith cause the order to be published in the Official Gazette.

PART IV.

CORRUPT PRACTICES AND ELECTORAL OFFENCES.

22. Corrupt practices.—For the Purposes of this Act, the practices specified in—

(*a*) clauses (1), (2), (3), (5), (7) and (8) of section 123 of the Representation of the People Act, 1951 (XLIII of 1951), and

(*b*) clauses (1), (3), (4) and (5) of section 124 of the said Act, shall be deemed to be corrupt practices, and the said clauses shall, in relation to a presidential election or vice-presidential election, have effect subject to the following modifications, namely:—

(i) that in the *Explanation* to clause (1) of section 123 for the words and figures "referred to in section 76" the words "if any, prescribed" shall be substituted :—

(ii) that in clause (3) of the said section, for the words "in the same or some other constituency" the words "at the same election" shall be substituted ;

(iii) that from clause (7) of the said section, the words " or the employment of any person by a candidate or his agent" shall be omitted ;

(iv) that the *Explanation* to clause (8) of the said section shall be omitted ;

(v) that in clause (1) of section 124, the reference to clauses (1) to (8) of section 123 shall be construed as a reference to clauses (1), (2), (3), (5), (7) and (8) of section 123 as so modified ;

(vi) that any reference to the Representation of the People Act, 1951 (XLIII of 1951) in those clauses shall be construed as a reference to this Act.

23. Electoral offences.—The provisions of sections 128, 129, 134, 136 and 137 of the Representation of the People Act, 1951 (XLIII of 1951), shall apply in relation to a presidential election and vice-presidential election and to any candidate at either of such elections as they apply in relation to an election to either House of Parliament and to any candidate at such election subject to the following modifications, namely :—

(*a*) that any reference to the Representation of the People Act, 1951 (XLIII of 1951) or the Representation of the People Act, 1950 (XLIII of 1950) in those provisions shall be construed as a reference to this Act; and

(*b*) that the references to a Regional Commissioner appointed under clause (4) of article 324 and to the Chief Electoral Officer in section 137 shall be omitted.

PART V.

MISCELLANEOUS.

24. Power to make rules.—(1) The Central Government may, after consulting the Election Commission by Notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power such rules may provide for all or any of the following matters, namely :—

(*a*) the maintenance of a list of members of the electoral college referred to in article 54 with their addresses corrected up-to-date for the purposes of presidential elections;

(*b*) the maintenance of a list of members of both Houses of Parliament with their addresses corrected up-to-date for the purposes of vice-presidential elections;

(*c*) the powers and duties of a Returning Officer and the performance by any officer appointed to assist the Returning Officer of any function of the Returning Officer;

(*d*) the form and manner in which nominations may be made and the procedure to be followed in respect of the presentation of nomination papers;

(*e*) the scrutiny of nominations and, in particular, the manner in which such scrutiny shall be conducted and the conditions and circumstances under which any person may be present or may enter objections thereat;

(*f*) the publication of a list of valid nominations;

(*g*) the appointment and the revocation of the appointment of election agent and the duties of such agent;

(*h*) the place and hours of polling, the manner in which votes are to be given and the procedure as to voting to be followed at elections;

(*i*) the scrutiny and counting of votes including cases in which a re-count of the votes may be made before the declaration of the result of the election;

(*j*) the safe custody of ballot boxes, ballot papers and other election papers, the period for which such papers shall be preserved and the inspection and production of such papers;

(*k*) any other matter required to be prescribed by this Act.

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25. Jurisdiction of civil courts barred.—Save as provided in Part III, no civil court shall have jurisdiction to question the legality of any action taken or of any decision given by the Returning Officer or by any other person appointed under this Act in connection with an election.

STATEMENT OF OBJECTS AND REASONS.

Article 54 of the Constitution provides that the President of India shall be elected by the members of an electoral college consisting of (*a*) the elected members of both Houses of Parliament and (*b*) the elected members of the Legislative Assemblies of the States, and article 55 prescribes the manner in which the election shall be held. Article 66 provides that the Vice-President shall be elected by the members of both Houses of Parliament assembled at a Joint meeting. Article 71 (1) lays down that doubts and disputes arising out of or in connection with the election of a President or Vice-President shall be inquired into and decided by the Supreme Court. Article 71 (3) authorises Parliament to regulate by law, subject to the provisions of the Constitution, any matter relating to or connected with the election of a President or Vice-President.

The Bill seeks to provide for the conduct of elections to the offices of President and Vice-President, the decision of disputes arising out of or in connection with such elections, the corrupt practices and other offences at or in connection with such elections and other ancillary matters.

KAILAS NATH KATJU.

NEW DELHI;

The 17th January 1952.

M. N. KAUL,
Secretary.

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